

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS ROGER WHITE, JR. and
PATRICIA CAULEY on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS
AMERICA, INC. and SONY
ELECTRONICS INC.,

Defendants.

Civil Action No. 17-1775
(MCA)(JAD)

Hon. Madeline Cox Arleo, U.S.D.J.
Hon. Joseph A. Dickson, U.S.M.J.

Return Date: November 11, 2019

Oral Argument Requested

Document Electronically Filed

**DEFENDANT SONY ELECTRONICS INC.'S REPLY IN SUPPORT OF
DEFENDANT SAMSUNG ELECTRONICS AMERICA, INC.'S MOTION
TO RECONSIDER OR, IN THE ALTERNATIVE, MOTION TO CERTIFY
ORDER OF AUGUST 21, 2019 FOR INTERLOCUTORY APPEAL
PURSUANT TO 28 U.S.C. § 1292(b)**

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**BRIEF STATEMENT OF REPLY IN SUPPORT OF MOTION TO
RECONSIDER, OR, IN THE ALTERNATIVE, MOTION TO CERTIFY AUGUST 21,
2019 ORDER**

Samsung Electronics America, Inc. (“Samsung”) has moved for reconsideration of this Court’s August 21, 2019 Order (“August 2019 Order”). ECF No. 105. Sony Electronics Inc. (“Sony”) joined Samsung’s Motion for Reconsideration. ECF No. 106. Because certain portions of the Court’s ruling are based on clear errors of law and fact, Defendants’ Motion for Reconsideration should be granted. Sony joins Samsung’s Reply in support of Defendants’ Motion for Reconsideration.

Sony agrees with Samsung that Plaintiffs’ Opposition is riddled with factual inaccuracies and misguided legal authorities that need to be addressed on the record. First, Plaintiffs contend that “Defendants do not even attempt to deny that they surreptitiously wiretap consumers’ communications, personal information and private conversations, or that they secretly transmit consumers’ communications, personal information and private conversations to third parties for profit, or that they do so without first obtaining informed consent from consumers.” (see Opp., pg 1, note 1). This is simply not true. Sony categorically rejects all allegations of wiretapping.

Second, Sony agrees with Samsung that Plaintiffs contentions regarding the Wiretap Act claims are misguided. The Court previously granted Sony and Samsung’s Motion to Dismiss the First Amended Complaint (“FAC”) in its entirety. 2018 Order, ECF No. 82 (“Sept. 2018 Order”). In so doing, the “Court agree[d] that Defendants are parties to the communications at issue here” and dismissed Plaintiffs’ Wiretap Act claims “on that basis.” Sept. 2018 Order at 5. In all material respects, the allegations against Sony in the Second Amended Complaint (“SAC”) were identical

to those made in the dismissed FAC.¹ Yet, in its August 2019 Order, the Court found that Plaintiffs' previously-dismissed Wiretap Act allegations now sufficed. Sony agrees with Samsung that the Court's September 2018 Order was correct, and that the August 2019 Order drawing the opposite conclusion constituted clear error.

Sony asks the Court to reconsider, dismiss the Wiretap Act claims, and hence end this case. In the alternative, if the Court declines reconsideration, Sony joins in Samsung's request to certify the Court's August 2019 Order on the Wiretap Act claims for interlocutory review.

Dated: November 4, 2019

Respectfully submitted,

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¹ Procedurally, the Court and the parties must address only the factual allegations made in the SAC, as if they were true. Sony will contest many of the factual allegations pled in the SAC should this matter proceed, including allegations about how Sony Smart TVs work. While Plaintiffs have pleaded indiscriminately as to Smart TVs, the facts would also show material differences.